

**Staff
Summary
Report**



**To: Mayor & City Council
Through: City Manager**

Agenda Item Number 42
Meeting Date 05/10/01

SUBJECT: EXCESS WATER CONTRACT FOR CAP M&I WATER

PREPARED BY: Charlotte Benson, Assistant City Attorney (350-2813)

REVIEWED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: Resolution approving and authorizing Mayor to sign replacement Excess Water Contract for Central Arizona Project Municipal & Industrial Water.

COMMENTS: CENTRAL ARIZONA PROJECT (0107-03) RESOLUTION NO. 2001.26. Stipulation entered in settlement of CAWCD repayment litigation with United States requires changes to existing CAP excess water contracts. Resolution 2001.26 approves and authorizes execution of replacement contract to supercede City's existing contract.

Document Name: (20010510cacc02) Supporting Documents: Yes

SUMMARY: CAWCD entered into a stipulation with the United States to resolve disputes over the repayment obligation for the Central Arizona Project. The stipulation provides that the term of excess water contracts may not exceed one year, although the contracts may include a provision for automatic renewal. Current excess water contracts like Tempe's do not comply with the stipulation, and must be replaced. Resolution 2001.26 approves and authorizes execution of a replacement contract which reflects the stipulated settlement.

FISCAL NOTE: Price for excess water service for 2001 remains \$101.00 per acre-foot. Tempe incurs no additional costs for replacement contract than already allocated for existing excess water contract.

RECOMMENDATION: Approve and authorize Mayor to sign replacement excess water contract for CAP M&I water.

RESOLUTION NO. 2001.26

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING
THE MAYOR TO SIGN THE EXCESS WATER
CONTRACT FOR CAP M&I WATER.**

WHEREAS, the Central Arizona Water Conservation District (CAWCD) has entered into a stipulation with the United States to resolve disputes over the repayment obligation for the Central Arizona Project (CAP); and

WHEREAS, the stipulation provides that the term of excess water contracts may not exceed one year, although contracts may include a provision for automatic renewal; and

WHEREAS, the City of Tempe has an existing excess water contract with CAWCD that does not comply with the stipulation; and

WHEREAS, the CAWCD Board of Directors has approved a replacement form of excess water contract, and has offered that contract to the City of Tempe; and

WHEREAS, the City of Tempe has scheduled delivery of at least 500 acre-feet of excess CAP water to meet service area demands for non-member land this year; and

WHEREAS, the City of Tempe may use up to 800 acre-feet of excess CAP water this year depending on summer conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the replacement Excess Water Contract for CAP M&I Water be approved, and that the Mayor be authorized to sign the new contract for the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2001.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

AGREEMENT BETWEEN THE CENTRAL ARIZONA
WATER CONSERVATION DISTRICT AND
THE CITY OF TEMPE
PROVIDING FOR THE DELIVERY OF EXCESS
CENTRAL ARIZONA PROJECT WATER

This Agreement is made as of the ____ day of _____, 2001,
in pursuance generally of the Act of June 17, 1902 (32 Stat. 388),
and acts amendatory thereof or supplementary thereto, including but
not limited to the Boulder Canyon Project Act of December 21, 1928
(45 Stat. 1057, as amended, the Reclamation Project Act of August 4,
1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of
October 12, 1982 (96 Stat. 1263), and particularly the Colorado
River Basin Project Act of September 30, 1968 (82 Stat. 885), as
amended (the "Basin Project Act"), between the CENTRAL ARIZONA WATER
CONSERVATION DISTRICT ("CAWCD"), and the City of Tempe (the
"Contractor"), with its principal place of business in Tempe,
Arizona.

RECITALS

A. The Basin Project Act provides, among other things, that
for the purposes of furnishing irrigation and municipal and
industrial ("M&I") water supplies to water deficient areas of
Arizona and western New Mexico through direct diversion or exchange
of water, control of floods, conservation and development of fish
and wildlife resources, enhancement of recreation opportunities, and
for other purposes, the Secretary shall construct, operate, and

maintain the Central Arizona Project ("CAP").

B. The United States and CAWCD have entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988 (the "Repayment Contract"), which is incorporated by reference, providing for the delivery of water and repayment of costs of the CAP.

C. The United States and CAWCD have entered into the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action) (the "Stipulation"), which modifies the Repayment Contract in certain respects.

D. Paragraph 5(d)(2) of the Stipulation grants CAWCD the exclusive right to sell or use Excess Water.

E. The Contractor is in need of a water supply and desires to contract with CAWCD for Excess Water.

AGREEMENT

Repayment Contract and Stipulation Controlling

1. The Contractor expressly approves and agrees to all the terms presently set out in the Repayment Contract and Stipulation, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under those agreements, except as otherwise provided herein. In the event of any inconsistency between this Agreement and the Repayment

1 Contract, the provisions of the Repayment Contract, as modified by
2 the Stipulation, shall be controlling. Definitions included in the
3 Repayment Contract and Stipulation are applicable to this Agreement.
4 The first letters of terms so defined are capitalized herein.

5 Delivery of Water by CAWCD

6 2. In so far as Project Water supplies and the delivery
7 capability of the Project will permit, and subject to the provisions
8 of the Repayment Contract and Stipulation, CAWCD will deliver Excess
9 Water to the Contractor in an amount, and at a water service charge,
10 to be determined in accordance with the terms of this Agreement.
11 The determination of whether Excess Water is available for delivery
12 in any Year, and, if so, the amount of such Excess Water that is
13 available for delivery under this Agreement in any Year, is a
14 determination within the exclusive discretion of CAWCD; Provided,
15 however, That delivery of Excess Water under this Agreement shall
16 be subject to the prior satisfaction of all water deliveries
17 scheduled pursuant to a long-term contract or subcontract for
18 Project Water service, as that term is used in the Stipulation.

19 Term

20 3. The initial term of this Agreement expires on December 31
21 of the year in which it is executed. This Agreement will be
22 automatically renewed for successive one-year terms unless either
23 party notifies the other by October 1 of any year that it does not
24 wish to renew the Agreement for the following year or unless sooner
25 terminated in accordance with Article 6 or Article 11.

26 * * *

Conditions Relating to Delivery and Use

1 4. The delivery and use of water under this Agreement is
2 conditioned on the following, and the Contractor hereby agrees that:

3 (a) All uses of Project Water and Return Flow shall be
4 consistent with Arizona water law unless such law is inconsistent
5 with the Congressional directives applicable to the Central Arizona
6 Project.

7 (b) Project Water shall be used within Contractor's
8 service area or place of use. The Contractor's service area or
9 place of use is shown on the map which is attached as Exhibit A and
10 incorporated by this reference.

11 (c) The system or systems through which Project Water is
12 conveyed after delivery to the Contractor shall consist of
13 pipelines, canals, distribution systems, or other conduits which
14 will prevent excessive conveyance losses.

15 (d) Project Water furnished pursuant to this Agreement
16 shall be delivered through Project Works for use directly or by
17 exchange as permitted by law.

18 (e) Project Water furnished to the Contractor pursuant
19 to this Agreement may not be resold or transferred, but the
20 Contractor may enter into an arrangement with a groundwater savings
21 facility allowed under state law to store Project Water.

22 (f) The Contractor shall not pump, or within its legal
23 authority, permit others to pump ground water from within the
24 exterior boundaries of the Contractor's service area for use outside
25 of said service area unless such pumping is permitted under Title
26

1 45, Chapter 2, Arizona Revised Statutes, as it may be amended from
2 time to time, and CAWCD, and the Contractor shall agree, or shall
3 have previously agreed, that a surplus of ground water exists and
4 drainage is or was required; Provided, however, That such pumping
5 may be approved by CAWCD, and approval shall not be unreasonably
6 withheld, if such pumping is in accord with the Basin Project Act
7 and upon submittal by the Contractor of a written certification from
8 the Arizona Department of Water Resources or its successor agency
9 that the pumping and transportation of ground water is in accord
10 with Title 45, Chapter 2, Arizona Revised Statutes, as it may be
11 amended from time to time.

12 (g) Notwithstanding any other provision of this Agreement,
13 Project Water shall not be delivered to the Contractor unless and
14 until the Contractor has obtained final environmental clearance from
15 CAWCD for the system or systems through which Project Water is to
16 be conveyed after delivery to the Contractor at the Contractor's
17 Project delivery point.

18 Procedure for Ordering Water

19 5. (a) On or before the date of execution of this Agreement,
20 or as soon thereafter as is practicable, CAWCD will notify the
21 Contractor of the amount of Project Water available for delivery
22 during the first Year under this Agreement (the initial Year of
23 water delivery). The Contractor shall, within a reasonable period
24 of time as determined by CAWCD, submit a written schedule to CAWCD
25 showing the quantity of Excess Water desired by the Contractor
26 during each month of the initial Year of water delivery. CAWCD will

1 review the requested schedule and determine whether Excess Water is
2 available for delivery in the initial Year of water delivery, and,
3 if so, the amount of Excess Water available for delivery under this
4 Agreement during such Year. Within thirty (30) days of CAWCD's
5 receipt of the Contractor's requested schedule, CAWCD shall
6 determine and furnish to the Contractor the water delivery schedule
7 for the initial Year of water delivery which shall show the amount
8 of Excess Water projected to be delivered to the Contractor during
9 each month of such Year, contingent upon the Contractor remaining
10 eligible to receive water under all terms contained herein.

11 (b) The amounts, times, and rates of delivery of Excess
12 Water to the Contractor during each Year subsequent to the initial
13 Year of water delivery shall be in accordance with a water delivery
14 schedule for that Year. Such schedule shall be determined in the
15 following manner:

16 (i) On or before July 1 of each Year beginning with
17 July 1 of the initial Year of water delivery, CAWCD shall issue a
18 notice of availability of Excess Water to the Contractor.

19 (ii) On or before October 1 of each Year beginning
20 with October 1 of the initial Year of water delivery, the Contractor
21 shall submit in writing to CAWCD a water delivery schedule
22 indicating the amounts of Excess Water desired by the Contractor
23 during each month of the following Year.

24 (iii) Upon receipt of the schedule, CAWCD shall
25 review it together with all other water delivery schedules, and
26 determine whether Excess Water is available for delivery in the

1 following Year, and, if so, the amount of Excess Water available for
2 delivery under this Agreement in the following Year.

3 (iv) On or before November 15 of each Year beginning
4 with November 15 of the initial Year of water delivery, CAWCD shall
5 determine and furnish to the Contractor the water delivery schedule
6 for the following Year which shall show the amount of Excess Water
7 to be delivered to the Contractor during each month of that Year,
8 contingent upon the Contractor remaining eligible to receive water
9 under all terms contained herein.

10 (c) The monthly water delivery schedules may be amended
11 upon the Contractor's written request to CAWCD. Proposed amendments
12 shall be submitted by the Contractor to CAWCD no later than 15 days
13 before the desired change is to become effective, and shall be
14 subject to review and modification in like manner as the schedule.
15 CAWCD shall notify the Contractor of its action on the Contractor's
16 requested schedule modification within 10 days of CAWCD's receipt
17 of such request.

18 (d) The Contractor shall hold CAWCD, its officers, agents, and
19 employees, harmless on account of damage or claim of damage of any
20 nature whatsoever arising out of or connected with the actions of
21 CAWCD regarding water delivery schedules furnished by or to the
22 Contractor.

23 Contractor's Project Delivery Point, Measurement
24 and Responsibility for Distribution of Water

25 6. (a) Excess Water furnished to the Contractor pursuant to
26 this agreement shall be delivered to the Contractor at such point(s)
on the Water Supply System as are agreed upon in writing by CAWCD

1 and the Contractor. All such point(s) shall hereinafter be referred
2 to as the "Contractor's Project delivery point."

3 (b) Unless CAWCD and the Contractor agree by contract to
4 the contrary, the Contractor shall construct and install, at its
5 sole cost and expense, all connection facilities required to convey
6 water furnished to the Contractor pursuant to this Agreement to the
7 Contractor's service area or place of use, as the case may be. The
8 Contractor shall furnish, for written approval by CAWCD, drawings
9 and specifications showing all connection facilities to be
10 constructed or installed within the Water Supply System
11 right-of-way, and shall obtain such approval before commencing
12 construction or installation of such facilities. All facilities
13 constructed, installed, operated or maintained on the Water Supply
14 System right-of-way by or for the Contractor shall be subject to
15 such further agreements and to such restrictions and regulations as
16 to type, location, method of installation, operation, and
17 maintenance as may be prescribed by CAWCD.

18 (c) The Contractor shall construct, operate, and maintain
19 its connection facilities and appurtenant works in a good and
20 workmanlike manner and in full compliance with the laws of the State
21 of Arizona and with all laws, regulations, and orders of the United
22 States affecting such operations. The failure of the Contractor
23 after due notice to construct, operate, and maintain its connection
24 facilities and appurtenant works in a good and workmanlike manner
25 or to abide by any of the terms and conditions of any applicable
26 laws, regulations, or orders, shall cause this Agreement to be

1 subject to immediate termination at the option of CAWCD. The
2 Contractor shall reimburse CAWCD within thirty (30) days of
3 Contractor's receipt of a statement for the costs of repairing any
4 damage to Project facilities or Project rights-of-way caused by or
5 arising out of the Contractor's activities under this Agreement.

6 (d) Upon termination of this Agreement, the Contractor
7 shall promptly remove, at its sole cost and expense, all connection
8 facilities constructed or installed on the Water Supply System
9 right-of-way and restore said right-of-way and all Project
10 facilities affected to their condition immediately prior to the
11 construction or installation of such connection facilities. If the
12 Contractor fails to remove said connection facilities and restore
13 said right-of-way and Project facilities within thirty (30) days
14 after receiving any written notice from CAWCD to do so, CAWCD may
15 remove said connection facilities and restore said right-of-way and
16 Project facilities at the Contractor's cost and expense, and, within
17 thirty (30) days after receiving written demand from CAWCD to do so,
18 the Contractor shall pay CAWCD, as specified in such written demand,
19 for all costs and expenses incurred by CAWCD in removing said
20 connection facilities and restoring said right-of-way and Project
21 facilities.

22 (e) If the Contractor's Project delivery point is a
23 Project turnout or Project turnouts constructed by the United
24 States, and if the Contractor intends to convey water furnished to
25 the Contractor pursuant to this agreement through connection
26 facilities owned or operated by others, the use by the Contractor

1 of such connection facilities shall be the subject of written
2 agreement(s) between the Contractor and the owner(s) or operator(s)
3 of such connection facilities, and all such agreements shall include
4 such terms and conditions as may be required by CAWCD and shall be
5 subject to the prior, written approval of CAWCD before becoming
6 binding upon the parties thereto.

7 (f) Unless the Contractor's Project delivery point is a
8 Project turnout or Project turnouts constructed by the United
9 States, all water delivered from the Water Supply System shall be
10 measured with equipment furnished and installed by the Contractor
11 and operated and maintained by the Contractor at the Contractor's
12 sole cost and expense. The results of such measurements shall be
13 reported to CAWCD in such manner and at such time(s) as CAWCD may
14 prescribe. Upon the request of CAWCD, the accuracy of such
15 measurements shall be investigated by the Contractor, and any errors
16 which are determined to have occurred therein shall be adjusted;
17 Provided, however, That in the event the parties cannot agree on the
18 required adjustment, CAWCD's determination shall be conclusive.

19 (g) If the Contractor's Project delivery point is a
20 Project turnout or Project turnouts constructed by the United
21 States, all water delivered from the Water Supply System shall be
22 measured with equipment furnished and installed by the United States
23 and operated and maintained by CAWCD. Upon the request of the
24 Contractor, or CAWCD, the accuracy of such measurements shall be
25 investigated by CAWCD and the Contractor, and any errors which are
26 mutually determined to have occurred therein shall be adjusted;

1 Provided, however, That in the event the parties cannot agree on the
2 required adjustment, CAWCD's determination shall be conclusive.

3 (h) Neither the United States nor CAWCD shall be
4 responsible for the control, carriage, handling, use, disposal, or
5 distribution of water beyond the Contractor's Project delivery
6 point. The Contractor shall hold the United States and CAWCD
7 harmless on account of damage or claim of damage of any nature
8 whatsoever for which there is legal responsibility, including
9 property damage, personal injury, or death arising out of or
10 connected with the control, carriage, handling, use, disposal, or
11 distribution of water beyond the Contractor's Project delivery
12 point.

13 Interruptions and Reductions

14 7. In addition to the right of the United States under
15 Subarticle 8.3(a)(iv) of the Repayment Contract to temporarily
16 discontinue or reduce the amount of water to be delivered, CAWCD may
17 discontinue or reduce the quantity of water to be furnished to the
18 Contractor as herein provided for the purposes of investigation,
19 inspection, construction, testing, maintenance, repair, or
20 replacement of any of the Project facilities or any part thereof.
21 CAWCD may also discontinue or reduce the quantity of water to be
22 furnished to the Contractor if there is insufficient Project Water
23 or Project delivery capacity to deliver the Contractor's water
24 order, the water orders of other contractors of Excess Water
25 service, and all water deliveries scheduled pursuant to a contract
26 with the United States or a subcontract with the United States and

1 CAWCD providing for Project Water service for a period of 50 years
2 or more. So far as feasible, CAWCD shall attempt to coordinate any
3 such discontinuance or reduction with the Contractor and to give the
4 Contractor due notice in advance of such discontinuance or
5 reduction. In case of emergency, no notice need be given. The
6 United States, its officers, agents, and employees, and CAWCD, its
7 officers, agents, and employees, shall not be liable for damages
8 when, for any reason whatsoever, any interruption, discontinuance,
9 or reduction in delivery of water occurs. If any such
10 discontinuance or temporary reduction results in deliveries to the
11 Contractor of less water than what has been paid for in advance, the
12 Contractor shall be entitled to be reimbursed for the appropriate
13 proportion of such advance payments prior to the date of the
14 Contractor's next payment of water service charges or the Contractor
15 may be given credit toward the next payment of water service charges
16 if the Contractor should so desire.

17 No Long-Term Commitment to the Delivery of Project Water

18 8. Nothing in this Agreement shall be construed as an
19 allocation of Project Water to the Contractor, nor shall this
20 Agreement entitle the Contractor to any Project Water other than as
21 provided herein.

22 Quality of Water

23 9. CAWCD does not warrant the quality of any Project Water
24 furnished under this Agreement and is under no obligation to
25 construct or furnish water treatment facilities to maintain or
26 better the quality of any Project Water. The Contractor waives its

1 right to make a claim against the United States, CAWCD, or any other
2 Project subcontractor or contractor on account of the quality of
3 Project Water or any changes in water quality caused by the
4 commingling of Project Water with other water.

5 Water Service Charges

6 10. (a) The Contractor shall pay in advance water service
7 charges established annually by CAWCD. On or before the date of
8 execution of this Agreement, or as soon thereafter as is
9 practicable, CAWCD shall furnish the Contractor with the
10 Contractor's water service charges for the initial Year of water
11 delivery (the "initial Year"). Within a reasonable time of receipt
12 of said charges, but prior to the delivery of water, the Contractor
13 shall advance to CAWCD, in monthly installments payable on or before
14 the first day of each month of the initial Year, as determined by
15 CAWCD, the water service charges due for Excess Water scheduled for
16 delivery in the initial Year. For each subsequent Year, CAWCD will
17 establish water service charges, and CAWCD will notify the
18 Contractor of the amount of such charges on or before November 15
19 preceding each said subsequent Year. The Contractor shall make
20 payments of such charges in monthly installments due on or before
21 the first day of each month of said subsequent Year, as determined
22 by CAWCD, for Excess Water scheduled for delivery in said subsequent
23 Year. The Contractor shall pay in advance all water service charges
24 established by CAWCD for Excess Water scheduled for delivery under
25 this Agreement; Provided, however, That the Contractor shall be
26 relieved of the pumping energy portion of the water service charges

1 associated with any Project Water scheduled for delivery that is not
2 delivered to the Contractor.

3 (b) The payment of all water service charges when due
4 under this Agreement is a condition precedent to delivery of Excess
5 Water.

6 (c) The obligation of the Contractor to pay CAWCD as
7 provided in this Agreement is a general obligation of the Contractor
8 notwithstanding the manner in which the obligation may be
9 distributed among the Contractor's water users and notwithstanding
10 the default of individual water users in their obligations to the
11 Contractor.

12 Termination of Contract

13 11. If the Contractor remains in arrears in the payment of any
14 charges due CAWCD for a period of 60 days or more, CAWCD may
15 terminate this Agreement, which termination shall be effective 30
16 days after mailing written notice of termination to the Contractor.
17 The Contractor shall remain obligated to pay all charges required
18 to be paid under this Agreement during the time period until and
19 including the date of termination. The Contractor's obligation to
20 pay any amounts due but unpaid as of the date of termination shall
21 survive termination of this Agreement. CAWCD's right to terminate
22 this Agreement as provided in this Article 11 shall be in addition
23 to the other rights of CAWCD under this Agreement and to all other
24 rights provided by law.

25 Charges for Delinquent Payments

26 12. (a) The Contractor shall be subject to interest,
administrative and penalty charges on delinquent installments or

1 payments. The Contractor shall pay an interest charge for each day
2 the payment is delinquent beyond the due date. When a payment
3 becomes 60 days delinquent, the Contractor shall pay an
4 administrative charge to cover additional costs of billing and
5 processing the delinquent payment. When a payment is delinquent 90
6 days or more, the Contractor shall pay an additional penalty charge
7 of 6 percent per year for each day the payment is delinquent beyond
8 the due date. Further, the Contractor shall pay any fees incurred
9 for debt collection services associated with a delinquent payment.

10 (b) The interest charge rate shall be the greater of the
11 rate prescribed quarterly in the Federal Register by the Department
12 of the Treasury for application to overdue payments, or the interest
13 rate of 0.5 percent per month prescribed by Section 6 of the
14 Reclamation Project Act of 1939 (Public Law 76-260). The interest
15 charge rate shall be determined as of the due date and remain fixed
16 for the duration of the delinquent period.

17 (c) When a partial payment on a delinquent account is
18 received, the amount received shall be applied first to the penalty
19 and administrative charges, second, to the accrued interest, and
20 third to the overdue payment.

21 Rules, Regulations and Determinations

22 13. (a) The parties agree that the delivery of water or the
23 use of Federal facilities pursuant to this Agreement is subject to
24 Reclamation law, as amended and supplemented, and the rules and
25 regulations promulgated by the Secretary of the Interior under
26 Reclamation law.

(b) The Contracting Officer shall have the right to make
determinations necessary to administer this Agreement that are
consistent with the expressed and implied provisions of this
Agreement, the laws of the United States and the State of Arizona,
and the rules and regulations promulgated by the Secretary of the
Interior. Such determinations shall be made in consultation with
CAWCD and the Contractor.

21 Compliance with Environmental Laws

22 14. The Contractor, in carrying out this Agreement, shall
23 comply with all applicable environmental laws and regulations of the
24 United States and the State of Arizona and shall obtain all required
25 permits or licenses from the appropriate Federal, State, or local
26 authorities.

21 Equal Opportunity

22 15. During the performance of this Agreement, the Contractor
23 agrees as follows:

1 (a) The Contractor will not discriminate against any
2 employee or applicant for employment because of race, color,
3 religion, sex, or national origin. The Contractor will take
4 affirmative action to ensure that applicants are employed, and that
5 employees are treated during employment, without regard to their
6 race, color, religion, sex, or national origin. Such action shall
7 include, but not be limited to the following: employment,
8 upgrading, demotion, or transfer; recruitment or recruitment
9 advertising; layoff or termination; rates of pay or other forms of
10 compensation; and selection for training, including apprenticeship.
11 The Contractor agrees to post in conspicuous places, available to
12 employees and applicants for employment, notices to be provided by
13 the Contracting Officer setting forth the provisions of this
14 nondiscrimination clause.

15 (b) The Contractor will, in all solicitations or
16 advertisements for employees placed by or on behalf of the
17 Contractor, state that all qualified applicants will receive
18 consideration for employment without discrimination because of race,
19 color, religion, sex, or national origin.

20 (c) The Contractor will send to each labor union or
21 representative of workers with which it has a collective bargaining
22 agreement or other contract or understanding, a notice, to be
23 provided by the Contracting Officer, advising said labor union or
24 workers' representative of the Contractor's commitments under
25 Section 202 of Executive Order 11246 of September 24, 1965, as
26 amended, and shall post copies of the notice in conspicuous places
available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of
Executive Order No. 11246 of September 24, 1965, as amended, and of
the rules, regulations, and relevant orders of the Secretary of
Labor.

(e) The Contractor will furnish all information and
reports required by said amended Executive Order and by the rules,
regulations, and orders of the Secretary of Labor, or pursuant
thereto, and will permit access to its books, records, and accounts
by the Contracting Officer and the Secretary of Labor for purposes
of investigation to ascertain compliance with such rules,
regulations, and orders.

(f) In the event of the Contractor's noncompliance with
the nondiscrimination clauses of this agreement or with any of such
rules, regulations, or orders, this agreement may be canceled,
terminated, or suspended, in whole or in part, and the Contractor
may be declared ineligible for further Government contracts in
accordance with procedures authorized in said amended Executive
Order, and such other sanctions may be imposed and remedies invoked
as provided in said amended Executive Order, or by rule, regulation,
or order of the Secretary of Labor, or as otherwise provided by law.

1 (g) The Contractor will include the provisions of
2 paragraphs (a) through (g) in every subcontract or purchase order
3 unless exempted by rules, regulations, or orders of the Secretary
4 of Labor issued pursuant to Section 204 of said amended Executive
5 Order, so that such provisions will be binding upon each
6 subcontractor or vendor. The Contractor will take such action with
7 respect to any subcontract or purchase order as may be directed by
the Secretary of Labor as a means of enforcing such provisions,
including sanctions for noncompliance; Provided, however, That in
the event the Contractor becomes involved in, or is threatened with,
litigation with a subcontractor or vendor as a result of such
direction, the Contractor may request the United States to enter
into such litigation to protect the interests of the United States.

8 Compliance With Civil Rights Laws and Regulations

9 16. (a) The Contractor shall comply with Title VI of the
10 Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the
11 Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age
12 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other
applicable civil rights laws, as well as with their respective
implementing regulations and guidelines imposed by the U.S.
Department of the Interior and/or Bureau of Reclamation.

13 (b) These statutes require that no person in the United
14 States shall, on the grounds of race, color, national origin,
15 handicap, or age, be excluded from participation in, be denied the
16 benefits of, or be otherwise subjected to discrimination under any
17 program or activity receiving financial assistance from the Bureau
of Reclamation. By executing this agreement, the Contractor agrees
to immediately take any measures necessary to implement this
obligation, including permitting officials of the United States to
inspect premises, programs, and documents.

18 (c) The Contractor makes this agreement in consideration
19 of and for the purpose of obtaining any and all Federal grants,
20 loans, contracts, property discounts or other Federal financial
21 assistance extended after the date hereof to the Contractor by the
22 Bureau of Reclamation, including installment payments after such
23 date on account of arrangements for Federal financial assistance
which were approved before such date. The Contractor recognizes and
agrees that such Federal assistance will be extended in reliance on
the representations and agreements made in this article, and that
the United States reserves the right to seek judicial enforcement
thereof.

24 Books, Records, and Reports

25 17. The Contractor shall establish and maintain accounts and
26 other books and records pertaining to administration of the terms
and conditions of this Agreement, including: the Contractor's

1 financial transactions, water supply data, project operation,
2 maintenance and replacement logs, and Project land and right-of-way
3 use agreements; the water users' land-use (crop census), land
4 ownership, land-leasing and water-use data; and other matters that
5 CAWCD may require. Reports thereon shall be furnished to CAWCD in
6 such form and on such date or dates as CAWCD may require. Subject
7 to applicable Federal laws and regulations, each party to this
8 Agreement shall have the right during office hours to examine and
9 make copies of each other party's books and records relating to
10 matters covered by this Agreement.

11 Notices

12 18. Any notice, demand, or request authorized or required by
13 this Agreement shall be deemed to have been given, on behalf of
14 CAWCD, when mailed, postage prepaid, or delivered to the City of
15 Tempe, Water Resources Manager, P.O. Box 5002, Tempe, Arizona 85280-
16 5002, and on behalf of the Contractor when mailed, postage prepaid,
17 or delivered to the General Manager, Central Arizona Water
18 Conservation District, 23636 North 7th Street, Phoenix, Arizona
19 85024. The designation of the addressee or the address may be
20 changed by notice given in the same manner as provided in this
21 Article for other notices.

22 Assignment Limited--Successors and Assigns Obligated

23 19. The provisions of this Agreement shall apply to and bind
24 the successors and assigns of the parties hereto, but no assignment
25 or transfer of this Agreement or any right or interest therein shall
26 be valid until approved in writing by CAWCD.

IN WITNESS WHEREOF, the parties hereto have executed this
Agreement No. _____ effective the day and year first
above-written.

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

CITY OF TEMPE

Attest: _____
Its _____

By: _____
Its _____

Approved as to form:

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